

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

STATE OF MAINE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 1:14-cv-264-JDL
)	
SCOTT PRUITT, in his capacity as)	
Administrator, United States Environmental)	
Protection Agency, <i>et al.</i> ,)	
)	
Defendants,)	
and)	
)	
HOULTON BAND OF MALISEET)	
INDIANS, and PENOBSCOT NATION,)	
)	
Intervenors-Defendants.)	

**PLAINTIFFS' OPPOSITION TO INTERVENORS' AMENDED MOTION FOR
RECONSIDERATION OF THE COURT'S JUNE 27, 2018 ORDER AMENDING THE
SCHEDULING ORDER**

Plaintiffs ("Maine") request that the Court deny the amended motion for reconsideration dated June 29, 2018 ("Amended Motion," ECF No. 135) filed by Intervenors Penobscot Nation and the Houlton Band of Maliseet Indians ("Tribes") for the reasons outlined in EPA's opposition to the Tribes' Amended Motion (ECF No.136), all of which Maine incorporates by reference.

By this filing, Maine wishes to additionally respond to the Tribes' reference to prior stays of this action (ECF No. 135 at 1) and their statement that the current settlement discussions will not lead to the final resolution of this matter (*id.* at 2) by noting the following important context:

A significant development relating to this matter occurred on May 7, 2018, when EPA filed a status report (ECF No. 129), which in turn attached a new opinion letter dated April 27, 2018 ("2018 Opinion Letter," ECF No. 129-1) by the United States Department of Interior ("DOI"). As a result of EPA's filing on May 7, 2018, Maine first learned of the DOI's new 2018

Opinion Letter, which reverses several critical DOI positions contained in a prior DOI written legal opinion dated January 30, 2015, that had been relied on by EPA as legal support for many of the February 2, 2015 decisions at issue here. *See, e.g.* EPA’s Administrative Record (ECF No. 37-38, 90, 92; ECF No. 118 at 3 n.3, “AR”) at 5305 (stating that EPA sought DOI’s advice because EPA believes that DOI is “the federal government’s expert agency on matters of Indian law and is charged with administering the settlement acts in Maine,” and noting EPA’s reliance on that prior DOI opinion in interpreting Maine’s Indian settlement acts); *see also* AR at 5321, 5327 (noting EPA’s reliance on 2015 DOI opinion for new EPA legal interpretations of longstanding Maine law); AR 542-552 (2015 DOI opinion letter).

In particular, DOI’s 2018 Opinion Letter alters course (and indeed reverts to a prior interpretation from the 1990s, *see* ECF No. 129-1 at 3-4 & n.21) with respect to the federal government’s legal view of longstanding Maine law and Maine’s unique tribal-state relationship in the following critical ways: 1) the DOI has concluded that the Northern Tribes (*see* ECF No. 118 at 2 n.2) have no federally-protected tribal fishing rights (ECF No. 129-1 at 3, 5); 2) the DOI has concluded that the right to take fish for sustenance purposes in MIA, 30 M.R.S. §6207(4) (*see* ECF No. 118 at 11-12, 42-48) is far more narrow than previously interpreted by EPA in the decisions at issue here – *i.e.*, it is a limited right to “obtain” fish for sustenance rather than commercial purposes (ECF No. 129-1 at 3-4); 3) the DOI has concluded that this more-narrow right to take fish in Maine is limited to the Southern Tribal reservations only (*id.*); and 4) the DOI has concluded that the Wabanaki Study on which EPA bases its ultimate disapproval of Maine’s water quality standards for tribal waters (*see* ECF No. 118 at 52-54), while perhaps helpful in understanding conditions in pre-industrial Maine, “was not intended to identify contemporary tribal fish consumption patterns.” ECF No. 129-1 at 4. These conclusions bring

DOI and the federal government far more into alignment with Maine regarding the various issues of Maine law involved in this action. Thus, in Maine's view, EPA's filing of DOI's new 2018 Opinion Letter in this action has now made it likely that a final settlement will be reached.

CONCLUSION

For the reasons outlined above, as well as in EPA's opposition to the Tribes' Amended Motion, Maine requests that the Court deny the Amended Motion and allow Maine and EPA the requested time to finalize their ongoing and fruitful settlement discussions.

DATED: July 2, 2018

Respectfully submitted,

JANET T. MILLS
Attorney General

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-0006
Tel. 207-626-8566
scott.boak@maine.gov

CERTIFICATE OF SERVICE

I hereby certify that on this, the 2nd day of July 2018, I electronically filed the above document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties listed on the electronic service list.

/s/ Scott W. Boak
SCOTT W. BOAK
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-0006
Tel. 207-626-8566
scott.boak@maine.gov